Kuhl Glass Corp. d/b/a Thermaglas and Koehler I.G. Inc., Alter Egos/Single Employer *and* Local Union No. 336, International Brotherhood of Painters and Allied Trades, AFL–CIO *and* Local Union No. 826, International Brotherhood of Painters and Allied Trades, AFL–CIO. Cases 7–CA–36574 and 7–CA–36845

June 20, 1995

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND TRUESDALE

Upon a charge and amended charge filed by Local Union No. 336, International Brotherhood of Painters and Allied Trades, AFL–CIO (Local 336) in Case 7–CA–36574, on November 10 and December 12, 1994, respectively, and a charge filed by Local Union No. 826, International Brotherhood of Painters and Allied Trades, AFL–CIO (Local 826) in Case 7–CA–36845 on February 15, 1995, the General Counsel of the National Labor Relations Board issued a consolidated amended complaint on March 30, 1995, against Kuhl Glass Corp. d/b/a Thermaglas (Respondent Kuhl) and Koehler, I.G., Inc. (Respondent Koehler), alleging that the Respondents have violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charges, amended charge, and consolidated complaint, the Respondents failed to file an answer.[1]

On May 22, 1995, the General Counsel filed a Motion for Default Summary Judgment with the Board. On May 24, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Default Summary Judgment disclose that the Region, by letter dated April 14, 1995, notified the Respondents that unless an answer to the consolidated complaint were received by April 28, 1995, a Motion for Default Judgment would be filed.[2]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Kuhl, a corporation with an office and place of business in Saginaw, Michigan, has been engaged in the manufacture and nonretail sale of insulated windows and tempered glass. Respondent Koehler, a corporation with a place of business at 6069 North Lapeer Road, Fostoria, Michigan, has been engaged in the manufacture and retail sale of insulated windows. About October 1, 1994, Respondent Koehler was established by Respondent Kuhl as a subordinate instrument to and a disguised continuance of Respondent Kuhl. At all material times, Respondent Kuhl and Respondent Koehler have been affiliated business enterprises with common ownership, supervision, and equipment; have provided services for and made sales to each other; have interchanged personnel with each other; and have had labor relations policies set by the same individuals. Based on this conduct, Respondent Koehler and Respondent Kuhl are, and have been at all material times, alter egos and a single employer within the meaning of the Act.

During the calendar year 1994, the Respondents purchased and received at their Michigan facilities goods valued in excess of $50,000 directly from points outside the State of Michigan. We find that the Respondents are an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 336 and Local 826 (the Charging Unions)

[1] Pursuant to the charge filed by Local 336, the General Counsel had previously issued a complaint against the Respondents in Case 7–CA–36574 on December 29, 1994. Although properly served with a copy of the complaint, the Respondents failed to file an answer to it as well.

[2] A copy of the consolidated complaint was sent to the Respondents by certified and ordinary mail. The copy of the consolidated complaint sent to Respondent Kuhl by certified mail was returned, marked "Unclaimed." The copy mailed to Respondent Kuhl by ordinary mail was not returned. The copy of the consolidated complaint sent to Respondent Koehler by certified mail was returned, marked "Moved, Left No Address." A Respondent's refusal or failure to claim certified mail, however, or failure to provide for receiving service does not constitute good cause for its failure to file an answer and cannot defeat the purposes of the Act. See *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986); *National Automatic Sprinklers*, 307 NLRB 481 fn. 1 (1992). Additionally, failure of the Post Office to return regular mail indicates actual service of the document. *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987).

are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of Respondents Kuhl and Koehler constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees including shipping and receiving employees at the Respondents' facilities in Saginaw and Fostoria, Michigan; but excluding all office clerical employees, guards and supervisors as defined in the Act.

Since about 1992, Local 336 has been the designated representative of the employees in the unit and has been so recognized by Respondent Kuhl in a collective-bargaining agreement between Respondent Kuhl and Local 336, which is effective by its terms from June 25, 1992, to May 31, 1995. About February 1, 1995, Local 336 voluntarily merged with its sister Local 826 with the consent and approval of the International Brotherhood of Painters and Allied Trades, AFL–CIO. During all material times since February 1, 1995, Local 826 has been a successor to Local 336 and is the exclusive collective-bargaining representative of the unit employees within the meaning of Section 9(a) of the Act.

Since about July 1994, Respondent Kuhl has failed to remit premiums to the insurance company for health insurance coverage for employees in the unit as required under the collective-bargaining agreement and past practice, and has also failed to remit unit employees' 401(k) plan deposits to the insurance company as required under the collective-bargaining agreement and past practice. In addition, since about November 1994, Respondent Kuhl has failed to pay unit employees the wage rates set forth in the collective-bargaining agreement. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective-bargaining. Respondent Kuhl's unilateral actions are midterm unilateral modifications of the terms of the collective-bargaining agreement without the consent of the Charging Unions and without complying with the provisions of Section 8(d) of the Act. Respondent Kuhl engaged in this conduct without notification to the Charging Unions and without providing them the opportunity to bargain over the decisions or the effects of the decisions and changes.

Since about October 1, 1994, when the Respondents began the alter ego operation known as Respondent Koehler, the Respondents have failed and refused to recognize the Charging Unions as the exclusive collective-bargaining representative of the employees at Respondent Koehler's facility in Fostoria, Michigan, and refused to apply the terms of the collective-bargaining agreement to the Fostoria employees.

Since about October 1, 1994, the Respondents have transferred unit work and equipment to Respondent Koehler's facility from Respondent Kuhl's facility. The Respondents engaged in this conduct because its employees joined and assisted Local 336 and engaged in concerted protected activities under the Act and to discourage employees from engaging in those activities.

Since about August 15, 1994, the Respondents have deducted union dues from the wages of unit employees from whom it did not receive signed dues deduction authorization. By engaging in this conduct, the Respondents have encouraged their employees to join or assist the Charging Unions.

About late November or early December 1994, Respondent Kuhl dealt directly with unit employees to persuade them to agree to a change in their health care coverage, thereby bypassing and undermining Local 336 as the designated representative of the unit employees.

CONCLUSIONS OF LAW

By refusing to recognize the Charging Unions, refusing to apply the terms of the collective-bargaining agreement to the Fostoria employees, transferring unit work and equipment, and deducting union dues, as described above, the Respondents have been discriminating in regard to hire, tenure, or terms and conditions of employment of their employees, thereby discouraging or encouraging membership in a labor organization, and have thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

By failing to remit health insurance premiums, failing to remit unit employees 401(k) plan deposits, failing to pay contractual wage rates, transferring unit work and equipment, and dealing directly with unit employees, as described above, the Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of their employees and have thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondents, since about October 1, 1994, discriminatorily transferred unit work and equipment to Respondent Koehler's facility from Respondent Kuhl's facility, we

shall order the Respondents, if so requested by Local 826, to restore the Fostoria facility work to the Saginaw facility, recall unit employees laid off as a result of the work transfer, and make those employees whole for any loss of pay they may have suffered as a result of the discriminatory transfer of work and equipment. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Furthermore, having found that the Respondents have violated Section 8(a)(5) and (1) by failing, since July 1994, to remit premiums to the insurance company for health insurance coverage for the unit employees, as required by the collective-bargaining agreement and past practice, we shall order the Respondents to reinstate the prior insurance coverage to unit employees and make them whole by reimbursing them for any expenses ensuing from the Respondents' unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, above.

Having also found that the Respondents have violated Section 8(a)(5) and (1) by failing, since July 1994, to remit unit employees' 401(k) plan deposits to the insurance company, as required by the collective-bargaining agreement and past practice, we shall order the Respondents to make the unit employees whole by remitting all 401(k) plan deposits collected from employees and any additional amounts necessary to restore the status quo in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

In addition, the Respondents shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, above, such amounts to be computed in the manner set forth in *Ogle Protection Service*, above, with interest as prescribed in *New Horizons for the Retarded*, above.[3]

In addition, having found that the Respondents violated Section 8(a)(5) and (1) by failing, since November 1994, to pay unit employees contractual wage rates, we shall order the Respondents to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, above, with interest as prescribed in *New Horizons for the Retarded*, above.

[3] To the extent that an employee has made personal contributions that are accepted in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondents will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondents otherwise owes.

Having found that the Respondents have violated Section 8(a)(3) and (1) since August 15, 1994, by unlawfully deducting union dues from unit employees' paychecks, we shall order the Respondents to return the unlawfully deducted dues to the employees, with interest, as prescribed in *New Horizons for the Retarded*, above.

Finally, having found that the Respondents, since about October 1, 1994, failed and refused to recognize the Unions at Respondent Koehler's Fostoria, Michigan facility, and refused to apply the terms of the collective-bargaining agreement to the Fostoria employees, we shall order the Respondents to recognize and, on request, bargain with Local 826 as the exclusive collective-bargaining representative of the Fostoria employees and retroactively apply the terms of the collective-bargaining agreement to those employees and make them whole for any losses attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, above, with interest as prescribed in *New Horizons for the Retarded*, above.

ORDER

The National Labor Relations Board orders that the Respondents, Kuhl Glass Corp. d/b/a Thermaglas and Koehler, I.G. Inc., Alter Egos/Single Employer, Saginaw and Fostoria, Michigan, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to remit premiums to the insurance company for health insurance coverage for employees in the unit as required under the collective-bargaining agreement and past practice. The unit includes the following employees:

> All full-time and regular part-time production and maintenance employees including shipping and receiving employees at the Respondent's' facilities in Saginaw and Fostoria, Michigan; but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Failing to remit unit employees' 401(k) plan deposits to the insurance company as required under the collective-bargaining agreement and past practice.

(c) Failing to pay unit employees the wage rates set forth in the collective-bargaining agreement.

(d) Failing or refusing to recognize Local 336 and/or Local 826, International Brotherhood of Painters and Allied Trades, AFL–CIO, as the exclusive collective-bargaining representative of the employees at the Koehler facility in Fostoria, Michigan, and refusing to apply the terms of the collective-bargaining agreement to the Fostoria employees.

(e) Discriminatorily transferring unit work and equipment to the Koehler Fostoria, Michigan facility from the Kuhl facility in Saginaw, Michigan, because its employees join or assist Local 336 or engage in

concerted protected activities under the Act or to discourage employees from engaging in those activities, and without bargaining in good faith with the Union.

(f) Deducting union dues from the wages of unit employees for whom it does not possess signed dues deduction authorizations.

(g) Dealing directly with unit employees to persuade them to agree to a change in their health care coverage, thereby bypassing and undermining Local 336 as the designated representative of the unit employees.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore, if so requested by Local 826, the Fostoria facility work to the Saginaw facility, recall unit employees laid off as a result of the work transfer, and make those employees whole, with interest, for any loss of pay they may have suffered as a result of the discriminatory transfer of work and equipment, as set forth in the remedy section of this decision.

(b) Reinstate the prior health insurance coverage for unit employees, and make them whole by reimbursing them for any expenses ensuing from the Respondents' unlawful conduct, as set forth in the remedy section of this decision.

(c) Make the unit employees whole for any loss of earnings attributable to its failure to pay the unit employees the contractually required wage rates, as set forth in the remedy section of this decision.

(d) Remit unit employees' 401(k) plan deposits to the insurance company, as required by the collective-bargaining agreement and past practice and make the unit employees whole, as set forth in the remedy section of this decision.

(e) Return the unlawfully deducted dues to the employees, with interest, as set forth in the remedy section of this decision.

(f) Recognize and, on request, bargain with Local 826 as the exclusive collective-bargaining representative of the Fostoria employees, retroactively apply to those employees and honor the terms of the collective-bargaining agreement, effective from June 25, 1992, to May 31, 1995, until a new agreement or good-faith impasse is reached, and make them whole, with interest, in the manner set forth in the remedy section of this decision.

(g) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Post at its facilities in Saginaw and Fostoria, Michigan, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced or covered by any other material.

(i) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

Dated, Washington, D.C. June 20, 1995

Margaret A. Browning, Member

Charles I. Cohen, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to remit premiums to the insurance company for health insurance coverage for employees in the unit as required under the collective-bargaining agreement and past practice. The unit includes the following employees:

> All full-time and regular part-time production and maintenance employees including shipping and receiving employees at our facilities in Saginaw and Fostoria, Michigan; but excluding all office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT fail to remit unit employees' 401(k) plan deposits to the insurance company as required under the collective-bargaining agreement and past practice.

WE WILL NOT fail to pay unit employees the wage rates set forth in the collective-bargaining agreement.

WE WILL NOT fail or refuse to recognize Local 336 and/or Local 826, International Brotherhood of Painters and Allied Trades, AFL–CIO, as the exclusive collective-bargaining representative of the employees at the Koehler facility in Fostoria, Michigan, or refuse to apply the terms of the collective-bargaining agreement to the Fostoria employees.

WE WILL NOT discriminatorily transfer unit work and equipment to the Koehler Fostoria, Michigan facility from the Kuhl facility in Saginaw, Michigan because our employees join or assist Local 336 or engage in concerted protected activities under the Act or to discourage employees from engaging in those activities, and without bargaining in good faith with the Union.

WE WILL NOT deduct union dues from the wages of unit employees for whom we do not possess signed dues deduction authorizations.

WE WILL NOT deal directly with unit employees to persuade them to agree to a change in their health care coverage, thereby bypassing and undermining Local 336 as the designated representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore, if so requested by Local 826, the Fostoria facility work to the Saginaw facility, recall unit employees laid off as a result of the work transfer, and make those employees whole, with interest, for any loss of pay they may have suffered as a result of the discriminatory transfer of work and equipment.

WE WILL restore the prior insurance coverage for unit employees, and make them whole by reimbursing them for any expenses ensuing from our unlawful conduct.

WE WILL make the unit employees whole, with interest, for any loss of earnings attributable to our failure to pay the unit employees the contractually required wage rates.

WE WILL remit unit employees' 401(k) plan deposits to the insurance company, as required by the collective-bargaining agreement and past practice, and make the unit employees whole for our failure to do so.

WE WILL return the unlawfully deducted dues to the employees, with interest.

WE WILL recognize and, on request, bargain with Local 826 as the exclusive collective-bargaining representative of the Fostoria employees, retroactively apply to those employees and honor the terms of the collective-bargaining agreement, effective from June 25, 1992, to May 31, 1995, until a new agreement or good-faith impasse is reached, and make them whole, with interest, for any losses attributable to our failure to do so.

KUHL GLASS CORP. D/B/A THERMAGLAS AND KOEHLER I.G. INC.